

51948

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	PATENT
	:	
Martin KRICK	:	
	:	
Serial No. 10/591,992	:	Art Unit:
	:	
Filed: May 7, 2005	:	Examiner:
	:	
For: DEVICE FOR CONTROLLING	:	
AND ACTUATING A VIBRATING	:	
MECHANISM	:	

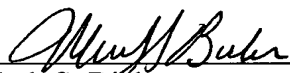
**SUBMISSION OF ENGLISH LANGUAGE
PRELIMINARY EXAMINATION REPORT**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is an English language Preliminary Examination Report for the above-identified application.

Respectfully submitted,



Mark S. Bicks
Reg. No. 28,770

Roylance, Abrams, Berdo & Goodman, LLP
1300 19th Street, NW, Suite 600
Washington, DC 20036
(202)659-9076

Dated: May 15, 2007

From the INTERNATIONAL BUREAU

PCT

NOTIFICATION OF TRANSMITTAL
OF COPIES OF TRANSLATION
OF THE INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY
(CHAPTER I OR CHAPTER II
OF THE PATENT COOPERATION TREATY)
(PCT Rules 44bis.3(c) and 72.2)

To:

BARTELS UND PARTNER
Lange Strasse 51
70174 Stuttgart
ALLEMAGNE

Bartels und Partner
Patentanwälte

Eingegangen: 15. NOV. 2006
Received:

TERMIN

Date of mailing (day/month/year)

09 November 2006 (09.11.2006)

Applicant's or agent's file reference

40cdh/229360

IMPORTANT NOTIFICATION

International application No.

PCT/EP2005/002456

International filing date (day/month/year)

09 March 2005 (09.03.2005)

Applicant

HYDAC SYSTEM GMBH et al

1. Transmittal of the translation to the applicant.

The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter I).



The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter II).

2. Transmittal of the copy of the translation to the designated or elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following designated or elected Offices requiring such translation:

None

The following designated or elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DZ, EA, EC, EE, EG, EP, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OA, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK, SL, SM, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability (Chapter II).

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned within the applicable time limit (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO
34, chemin des Colombettes
1211 Geneva 20, Switzerland

Authorized officer

Agnes Wittmann-Regis

Facsimile No. +41 22 338 82 70

Facsimile No. +41 22 338 82 70

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 40cdh/229360	FOR FURTHER ACTION	See item 4 below
International application No. PCT/EP2005/002456	International filing date (<i>day/month/year</i>) 09 March 2005 (09.03.2005)	Priority date (<i>day/month/year</i>) 17 March 2004 (17.03.2004)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant HYDAC SYSTEM GMBH		

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 *bis*.1(a).

2. This REPORT consists of a total of 6 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report |
| <input type="checkbox"/> | Box No. II | Priority |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).

Date of issuance of this report
01 November 2006 (01.11.2006)

Authorized officer

Agnes Wittmann-Regis

e-mail: pt06@wipo.int

The International Bureau of WIPO
34, chemin des Colombettes
1211 Geneva 20, Switzerland

Facsimile No. +41 22 338 82 70

Form PCT/IB/373 (January 2004)

PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing **See form PCT/ISA/210**
(day/month/year)

Applicant's or agent's file reference
40cdh/229360

FOR FURTHER ACTION

See paragraph 2 below

International application No.
PCT/EP2005/002456

International filing date (day/month/year)
09.03.2005

Priority date (day/month/year)
17.03.2004

International Patent Classification (IPC) or both national classification and IPC
E02D3/074, B06B1/16

Applicant
HYDAC SYSTEM GMBH

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP

Authorized officer

Facsimile No.

Telephone No.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/002456

Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language
_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
☐ table(s) related to the sequence listing

b. format of material

- ☐ in written format
☐ in computer readable form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/EP2005/002456

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Claims	1-12	YES
Claims		NO

Inventive step (IS)

Claims	4-7, 9, 10	YES
Claims	1-3, 8, 11, 12	NO

Industrial applicability (IA)

Claims	1-12	YES
Claims		NO

2. Citations and explanations:

1. DE-C-19912813 discloses a device for controlling and actuating a vibrating mechanism in soil tampers, having a hydraulic pump (7) which drives a hydraulic motor (3), which interacts with the vibrating mechanism (1), as part of a hydraulic circuit, a switching valve (11) being connected to said hydraulic circuit in an auxiliary branch (12), said switching valve (11) being controllable by means of a switching device (15-17).

The subject matter of claim 1 differs from that which is previously known on the one hand in that the switching valve is embodied as a pressure balance, and on the other hand in that the switching device is a hydraulic switching device. Claim 1, and thus claims 2-12 which are assigned to it, therefore meet the criteria of PCT Article 33(2).

2.1 In said source, the switching valve (12) can be switched between an open and a closed position, wherein in the open position, a connection is produced between the inlet side (1) and a first outlet side (12) in order to pressurize an adjustment device of the vibrating mechanism (1), and in the closed position, a connection

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/002456

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

is produced between the first outlet side (12) and a second outlet side (14) in order to recirculate the hydraulic oil into a tank (8). Said switching valve is therefore embodied, as in the present invention, as a two-way valve, with the term "pressure balance" in claim 1 not constituting a clear difference to that which is previously known.

2.2 It is known from EP-A-0251076 to use a hydraulic switching device (4,5) to drive and actuate a vibrating mechanism. Here, it is to be noted that switching devices of said type are decisive in the technical field of interest, for example DE-A-4445151, control valve (80), EP-A-0960659, or DE-U-8536119, control valve (41). Since the sensitivity of electrical components to mechanical loading is furthermore known in particular in a vibrating mechanism, a person skilled in the art would replace the switching device known from DE-C-19912813 (electrical pushbutton 15) with a hydraulic switching device without thereby being inventive, and therefore arrive at a device as per claim 1. Under said circumstances, said claim does not satisfy the criteria of PCT Article 33(3).

3.1 The features added by dependent claims 2, 3, 8, 11, 12 do not appear to involve an inventive step (PCT Article 33(3)): claims 2, 8: known from DE-A-19912813, cf. paragraph 2.1; claim 3: known from EP-A-0251076, cf. return spring/lever (5); claims 11, 12; decisive in hydraulic circuits, for example DE-A-4445151.

3.2 In contrast, the features introduced by claim 4, and therefore claims 5-7 which are assigned thereto, and by

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/002456

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

claim 9, and therefore claim 10 which is assigned thereto, are not suggested by the available prior art, regardless of the fact that a pressure balance which is further defined in such a way is known per se, cf. *inter alia* description page 4, lines 21-23.

3.3 Here, however, the structural difference between the pressure balance (claim 4) and the switching device (claim 9) should be clarified, (PCT Article 6) in this regard, cf. reference signs 22, 24 in figure 1 and paragraph 2.1 in the opinion.